

HOUSE BILL 1784  
By Curtiss

AN ACT to amend Tennessee Code Annotated, Section 45-1-104; Section 45-15-102; Section 45-15-103; Section 45-15-104; Section 45-15-105; Section 45-15-106; Section 45-15-107; Section 45-15-108; Section 45-15-109; Section 45-15-110; Section 45-15-112; Section 45-15-113; Section 45-15-114; Section 45-15-115; Section 45-15-116; Section 45-15-117; Section 45-15-118 and Section 45-15-119, relative to establishing a state regulatory structure for enforcement by the commissioner of financial institutions for the title pledge industry through the listed statutes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-15-102, is amended by deleting subdivisions (1) through (4) and substituting instead the following:

- (1) Ensure a sound system of making title pledge loans through statewide licensing of title pledge lenders by the department;
- (2) Establish licensing requirements;
- (3) Provide for the examination and regulation of title pledge lenders by the department; and
- (4) Ensure financial responsibility to the public;

SECTION 2. Tennessee Code Annotated, Section 45-15-103, is amended by deleting subdivision (3) and substituting instead the following language:

“Pledged property” means any titled personal property or personal property certificate of title that is pledged to and held by a title pledge lender in the course of the title pledge lender’s business and is the subject of a title pledge agreement;

Tennessee Code Annotated, Section 45-15-103, is further amended by deleting subdivision (4) and by substituting instead the following appropriately numbered subdivisions:

( ) "Commissioner" means the commissioner of financial institutions or the commissioner's designated representative;

( ) "Department" means the department of financial institutions;

( ) "Month" means thirty (30) days.

Tennessee Code Annotated, Section 45-15-103, is further amended by deleting from subdivision (5) the fifth and sixth sentences and substituting instead the following:

The title pledge agreement shall provide that upon failure by the pledgor to redeem the certificate of title at the end of the original thirty-day agreement period, or at the end of any thirty-day renewal or renewals thereof, the title pledge lender shall be allowed to take possession of the titled personal property, sell it in a commercially reasonable manner and remit any surplus after sale to the pledgor, as provided in § 45-15-114. The title pledge lender shall note its lien on the certificate of title and shall upon its return from the state retain physical possession of the certificate of title at the title pledge office for the duration of the title pledge agreement. The title pledge lender shall not be required to retain physical possession of the titled personal property at any time.

Tennessee Code Annotated, Section 45-15-103, is further amended by deleting from subdivision (6) the language "and/or property pledge agreements".

SECTION 3. Tennessee Code Annotated, Section 45-15-104(b), is amended by deleting from the first sentence the language "and property pledge agreements".

SECTION 4. Tennessee Code Annotated, Section 45-15-105, is amended by deleting the section in its entirety and substituting instead the following:

No person shall engage in the business of title pledge lending without having first obtained a license. A separate license shall be required for each location from which such business is conducted. Any person engaged in the business of title pledge lending on January 1, 2006, may continue to engage in the business without a license until the

commissioner has acted upon the application for a license if such application is filed by January 9, 2006.

SECTION 5. Tennessee Code Annotated, Section 45-15-106, is amended by deleting the section in its entirety and substituting instead the following:

(a) To qualify for a license, an applicant shall satisfy the following requirements:

(1) The applicant shall have capital of at least seventy-five thousand dollars (\$75,000) per title pledge office; and

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this chapter, the commissioner may review and approve:

(A) The relevant business records and the capital adequacy of the applicant;

(B) The competence, experience, integrity and financial ability of any person who is a director, officer, or five percent (5%) or more shareholder of the applicant or owns or controls the applicant; and

(C) Any record, on the part of the applicant, or any person referred to in subdivision (2)(B), of any criminal activity, any fraud or other act of personal dishonesty, any act, omission or practice which constitutes a breach of a fiduciary duty or any suspension, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

(b) The requirements set forth in subdivisions (1) and (2) are continuing in nature.

(c) Each application for a license shall be in writing and under oath to the commissioner, in a form prescribed by the commissioner, and shall include the following:

(1) The legal name, residence and business address of the applicant and, if the applicant is a partnership, limited liability company, or corporation, of every member, officer, managing employee and director thereof;

(2) The location in Tennessee at which the registered office of the applicant shall be located; and

(3) Other data and information the commissioner may require with respect to the applicant, its directors, officers, or members.

(d) Each application for a license shall be accompanied by:

(1) A filing fee of five hundred dollars (\$500) which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof; and

(2) A balance sheet dated within one hundred eighty (180) days of such filing and an income statement for the twelve-month period preceding the date of the balance sheet, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm. For a newly created entity, the commissioner may accept only a balance sheet dated within one hundred eighty (180) days of such filing, accompanied by a projected income statement for the first twelve (12) months of operation.

(e) The filing fee set forth in subdivision (d)(1) shall be applicable to each location.

SECTION 6. Tennessee Code Annotated, Section 45-15-107, is amended by deleting the existing language in its entirety and substituting instead the following:

(a) Upon the filing of an application in a form prescribed by the commissioner, accompanied by the fee and documents required in § 45-15-106, the commissioner shall investigate to ascertain whether the qualifications prescribed by § 45-15-106 have been satisfied. If the commissioner finds that the qualifications have been satisfied, and approves the documents, the commissioner shall issue to the applicant a license to engage in the title pledge lending business in Tennessee.

(b) The license shall be kept conspicuously posted in the place of business of the licensee.

(c) A license issued pursuant to this section shall remain in force and effect through the remainder of the fiscal year ending December 31 after its date of issuance unless earlier surrendered, suspended or revoked pursuant to this chapter.

(d) A license issued pursuant to this chapter is neither transferable nor assignable to any other person.

(e) The prior written approval of the commissioner is required for the continued operation of a title pledge lending business whenever a change in control of a licensee is proposed. "Control," in the case of a corporation, means direct or indirect ownership, or the right to control, fifty percent (50%) or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise unilaterally effect a change in company policy. "Control," in the case of any other entity, means the ability to change the managers or principals of the organization, whether active or passive. The commissioner may require information deemed necessary to determine whether a new application is required. Costs incurred by the commissioner in investigating a change of control request shall be paid by the person requesting such approval, subject to the limitations set forth in § 45-15-108.

(f) A licensee shall notify the department five (5) days before any change in the licensee's business location or business name.

(g) Within thirty (30) days of the occurrence of any one (1) of the events listed below, a licensee shall file a written report with the commissioner describing such event and its expected impact on the activities of the licensee in this state:

(1) The filing for bankruptcy or reorganization by the licensee;

(2) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority;

(3) Any felony indictment of the licensee or any of its directors, officers or principals; and

(4) Any felony conviction of the licensee or any of its directors, officers or principals.

(h) Licenses issued pursuant to this chapter shall expire on December 31. Each license may be renewed for the ensuing twelve-month period upon application by the license holder showing continued compliance with the requirements of § 45-15-106 and the payment to the commissioner annually, on or before December 1 of each year, a license renewal fee of five hundred dollars (\$500).

SECTION 7. Tennessee Code Annotated, Section 45-15-108, is amended by deleting the existing language in its entirety and substituting instead the following:

(a) The commissioner may promulgate reasonable regulations relative to the implementation of this chapter in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5 that are essential for the enforcement of this chapter. A copy of any rule or regulation adopted by the commissioner shall be mailed to each license holder at least ninety (90) days before the date it takes effect.

(b) The commissioner shall promulgate rules requiring each title pledge lender to issue a standardized consumer notification and disclosure form in compliance with federal truth-in-lending laws and this chapter prior to entering into any title pledge agreement wherein the pledged property will consist of, or include, one (1) or more motor vehicles titled by this or any other state. The required style, content and method of executing the form shall be specifically prescribed by the rules and shall be designed to ensure that the pledgor, prior to entering into such agreement, receives and acknowledges an accurate and complete notification and disclosure of the interest, fees, charges and any other costs.

(c) To assure compliance with the provisions of this chapter, the commissioner may examine the relevant books and records of any licensee. The commissioner may charge and collect an examination fee of two hundred dollars (\$200) per day per examiner for any compliance examination conducted by the commissioner, which fee shall not exceed one thousand two hundred dollars (\$1,200) per year.

(d) The commissioner, for the purpose of discovering violations of this chapter and for the purpose of determining whether a person is subject to the provisions of this chapter, is hereby authorized to examine all relevant books and records employed by such person in the transaction of the person's business.

(e) Each licensee shall keep and use in its business any books, accounts and records the commissioner may require to carry into effect the provisions of this chapter. Every licensee shall preserve the books, accounts and records for at least two (2) years.

(f) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial.

(g) If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted.

(h) Any hearing on the denial of a license shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. A decision of the commissioner following any hearing on the denial of a license is subject to review under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 8. Tennessee Code Annotated, Section 45-15-109, is amended by deleting the existing language in its entirety and substituting instead the following:

(a) The commissioner may, after notice and hearing, suspend or revoke any license if the commissioner finds that the licensee has intentionally:

(1) Failed to pay the annual license fee imposed by this chapter, or an examination fee imposed by the commissioner under the authority of this chapter;

(2) Committed any fraud, engaged in any dishonest activities or made any misrepresentations;

(3) Violated any provisions of this chapter or any administrative regulation issued pursuant thereto, or has violated any other law in the course of such licensee's dealings as a licensee; or

(4) Has made a false statement in the application for the license or failed to give a true reply to a question in the application.

(b) If the reason for revocation or suspension of a licensee's license at any one (1) location is of general application to all locations operated by a licensee, the commissioner may revoke or suspend all licenses issued to a licensee.



(c) A hearing shall be held on written notice given to the title pledge lender at least thirty (30) days prior to the date of the hearing and shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) If, after notice and opportunity for a hearing, the commissioner finds that a person has intentionally violated this chapter, or any administrative regulation issued pursuant thereto, the commissioner may:

(1) Order the person to cease and desist violating the chapter or any administrative rules issued pursuant thereto; or

(2) Require the refund of any fees or interest collected by such person in violation of this chapter, or take both such actions.

(e) The commissioner may enter into consent orders at any time with any person to resolve any matter arising under this chapter. A consent order shall be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule, regulation or order promulgated or issued hereunder has been violated, nor need it constitute a finding by the commissioner that such person has violated any provision of this chapter or any rule, regulation or order promulgated or issued under this chapter.

(f) Notwithstanding the issuance of a consent order, the commissioner may seek a civil penalty concerning matters encompassed by the consent order.

(g) Any person aggrieved by the conduct of a licensee under this chapter in connection with the licensee's regulated activities may file a written complaint with the commissioner who shall investigate the complaint and take any necessary or appropriate action pursuant to this section to resolve any violation of this chapter.

(h) The commissioner shall have exclusive administrative power to investigate and enforce any and all complaints filed by any person which are not criminal in nature, and which relate to the business of title pledge lending.

(i) The business of title pledge lending conducted in accordance with this chapter shall not be subject to or controlled by any other statute governing the imposition of interest, fees or loan charges, including without limitation, § 47-14-104.

(j) Each licensee shall file an annual report with the commissioner by December 1 of each year, containing the following information:

(1) The names and addresses of all persons owning a controlling interest in each licensee;

(2) The location of all title pledge offices operated by the licensee in this state;

(3) The names and addresses of all affiliated entities regulated under title 45, doing business in this state; and

(4) If the licensee is a corporation, the names and addresses of its officers and directors, or if the licensee is a partnership, the names and addresses of the partners, or if the licensee is a limited liability company, the names and addresses of the members and officers of the limited liability company.

(k) If the licensee holds two (2) or more licenses, a composite report shall be filed for such licensee.

(l) All such reports shall be filed in such form as may reasonably be required by the commissioner and shall be sworn to by a responsible officer of the licensee.

(m) The information submitted by licensees pursuant to this section shall be afforded the same degree of confidentiality by the department and the commissioner as is applicable to reports filed by financial institutions pursuant to § 45-2-1603.

SECTION 9. Tennessee Code Annotated, Section 45-15-110, is amended by deleting the existing language in its entirety and substituting instead the following:

(a) Before a title pledge lender enters into a new title pledge agreement, a title pledge lender shall have the potential pledgor sign the following notice which shall be printed in at least fourteen (14) point bold type:

(1) THIS LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS.

(2) YOU SHOULD USE THIS LOAN ONLY TO MEET SHORT-TERM CASH NEEDS.

(3) YOU WILL BE REQUIRED TO PAY ADDITIONAL INTEREST AND FEES IF YOU RENEW THIS LOAN RATHER THAN PAY THE DEBT IN FULL WHEN DUE.

(4) THIS LOAN IS A HIGHER INTEREST LOAN. YOU SHOULD CONSIDER WHAT OTHER LOWER COST LOANS MAY BE AVAILABLE TO YOU.

(5) YOU ARE PLACING AT RISK YOUR CONTINUED OWNERSHIP OF THE PERSONAL PROPERTY THAT YOU ARE PLEDGING FOR THIS LOAN, INCLUDING YOUR MOTOR VEHICLE IF THAT IS THE PROPERTY PLEDGED.

(b) A title pledge lender shall keep a record of each and every title pledge agreement executed. Such record, as well as the title pledge agreement itself, shall include the following:

(1) A clear and accurate description of the titled personal property, including its vehicle identification number, license plate number (if applicable), year, make, model and color;

(2) The date of the title pledge agreement;

(3) The amount of the loan made pursuant to the title pledge agreement;

(4) The date of maturity of the loan; and

(5) The name, sex, date of birth, residence address, and the type and unique identification number of the photo identification of the pledgor.

(c) The pledgor shall sign the title pledge agreement and shall be provided with a copy of such agreement. The title pledge agreement shall also be signed by the title pledge lender, or the lender's employee or agent. If the pledgor has been issued a social security number, the title pledge lender shall keep on file the social security number of the pledgor. The social security number shall not be printed on the title pledge agreement in order to protect the privacy of the pledgor.

(d) The title pledge lender shall be required to record the lender's security interest in the titled personal property by noting a lien on the certificate of title for all title pledge transactions.

SECTION 10. Tennessee Code Annotated, Section 45-15-112, is amended by deleting the language "or property pledge".

SECTION 11. Tennessee Code Annotated, 45-15-113, is amended by deleting the existing language in its entirety and substituting instead the following:

(a) Title pledge agreements made pursuant to this chapter shall not exceed thirty (30) days in length. Provided, however, such agreements may provide for renewals for additional thirty-day periods, which shall occur automatically, unless one (1) of the following has occurred:

(1) The pledgor has redeemed the pledged titled personal property or certificate of title by paying all principal, interest, and fees due in accordance with the title pledge agreement;

(2) The pledgor has surrendered possession, title and all other interest in and to the titled personal property and the certificate of title to the title pledge lender; or

(3) The title pledge lender has notified the pledgor in writing that the title pledge agreement is not to be renewed.

(b) Each title pledge lender shall furnish the pledgor with a statement at the beginning of any renewal period of the title pledge agreement. Such statement shall include the agreement number, the annual percentage rate, the monthly rate of interest, the monthly fee rate, the original principal balance of the loan, the current payoff balance of the loan, and the amount of any interest, fees or other reimbursements allowed pursuant to § 45-15-111 that have accrued since the last statement required by this subsection was issued to the pledgor. The statement shall also include the payment amount required to pay off the title pledge loan in full if such payment is made with cash or certified funds by the end of the renewal period, and the exact date through which that payoff balance will be honored. If the title pledge loan is past due, the statement shall also include the number of days past due as of the statement date, the minimum payment required and the exact date by which such minimum payment must be received in order to reinstate the account to current status. Such statement shall also include the telephone number and the normal business hours of operation at the office of the title pledge lender. Such statement shall be sent to the pledgor by first class mail, postage prepaid, at the pledgor's last-known address, within five (5) days of the expiration of the previous loan or renewal period.

SECTION 12. Tennessee Code Annotated, Section 45-15-114, is amended by deleting the existing language in its entirety and substituting instead the following:

(a) The title pledge lender has, upon default by the pledgor of any obligation pursuant to the title pledge agreement, the right to take possession of the titled personal property. In taking possession, the title pledge lender or the lender's agent may proceed without judicial process if this can be done without breach of the peace; or, if necessary, may proceed by action to obtain judicial process. After taking possession of the titled personal property, the title pledge lender shall retain possession of the titled personal property and the certificate of title for a twenty-day holding period.

(1) If, during the twenty-day holding period, the pledgor redeems the titled personal property and certificate of title by paying all amounts owed under the title pledge agreement, including all principal, interest, and fees owed, as well as the actual direct costs of location, repossession and storage, the pledgor shall be given possession of the titled personal property and the certificate of title without further charge.

(2) If the pledgor fails to redeem the titled personal property and certificate of title during the twenty-day holding period, then the title pledge lender shall have the right to sell the titled personal property in a commercially reasonable manner. After such sale, the title pledge lender shall return to the pledgor any surplus received from such sale after deducting from the sale proceeds the amount owed under the title pledge agreement, including all principal, interest and fees owed, as well as the actual direct costs of location, repossession, storage and sale.

(b) If the pledgor loses the title pledge agreement or other evidence of the transaction, the pledgor shall not thereby forfeit the right to redeem the pledged property,

but may promptly, before the lapse of the redemption date, make affidavit for such loss, describing the pledged property, which affidavit shall, in all respects, replace and be substituted for the lost title pledge transaction.

SECTION 13. Tennessee Code Annotated, Section 45-15-115, is amended by deleting the existing language in its entirety and substituting instead the following:

A title pledge lender may not:

(1) Accept a pledge from a person less than eighteen (18) years of age, or from anyone who appears to be intoxicated;

(2) Make any agreement giving the title pledge lender any recourse against the pledgor other than the title pledge lender's right to take possession of the titled personal property and certificate of title upon the pledgor's default or failure to redeem, and to sell or otherwise dispose of the titled personal property in accordance with the provisions of this chapter;

(3) Enter into a title pledge agreement in which the amount of money loaned in consideration of the pledge of any single certificate of title exceeds two thousand five hundred dollars (\$2,500);

(4) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this chapter;

(5) Purchase pledged titled personal property that was repossessed in the operation of its business;

(6) Maintain more than one (1) title pledge office or place of operation for each title pledge lender under each license. Provided, however, any such licensee may move from one (1) place of business to another, as permitted in § 45-15-107(f);

(7) Keep open any title pledge office before eight o'clock a.m. (8:00 a.m.) or after six o'clock p.m. (6:00 p.m.) of any other day during the year with the exception of November 25 through December 24 of each year. During such period, a title pledge lender may open such place of business at eight o'clock a.m. (8:00 a.m.) and shall be entitled to close at nine o'clock p.m. (9:00 p.m.); No title pledge lender shall be open on Sunday;

(8) Intentionally violate the provisions of this chapter or any rule promulgated pursuant thereto by the department; or

(9) Enter into a pledge agreement unless the pledgor presents a clear title to titled personal property at the time that the loan is made, and such title is retained, after the noting of the lien by the state, in the physical possession of the title pledge lender. If the title pledge lender knowingly files a lien against such property without possession of a clear title to such property, the resulting lien is void.

SECTION 14. Tennessee Code Annotated, Section 45-15-116, 45-15-117, 45-15-118 and 45-15-119 is amended by deleting each such existing section in its entirety.

SECTION 15. Tennessee Code Annotated, 45-1-104, is amended by deleting the language "or persons licensed under the Tennessee Title Pledge Act of 1995, chapter 15 of this title".

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.



SECTION 17. For the purpose of promulgating rules, this Act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on January 1, 2006, the public welfare requiring it.